

**Malaysian Indian Congress (suing through its public
officer Tan Sri K S Nijhar) & Ors v Makkal Osai Sdn Bhd
& Anor**

HIGH COURT (KUALA LUMPUR) — APPLICATION NO S2(S6)-23-52 OF
1999(2)

KAMALANATHAN RATNAM J

30 OCTOBER 2000

*Civil Procedure — Pleadings — Further and better particulars — Application for —
Defamation — Purpose of particulars — Details of malice*

The plaintiffs, the first being a political party, sued the defendants in libel for publishing an article which, the plaintiffs contended, in its natural and ordinary meaning, meant and was understood to mean, that members of Wanita MIC, particularly the leaders and high officials, are women of disrepute and loose morals, that they roam nightspots, neglect their families and that they are hypocrites in that they purport to speak of high moral values but instead behave in an immoral way. In their defence, the defendant denied that the said article was published with malice and without justification, and specifically relied on s 8 of the Defamation Act 1957. Alternatively, the defendants denied that said article in its natural and ordinary meaning bore or was capable of bearing the meanings the plaintiffs attributed to the article. The defendants further contended that the plaintiff's action in filing this suit was actuated by bad faith. The defendants also relied on fair comment upon matters of public interest and claimed that they had acted in good faith. The defendants then filed this application for further and better particulars of the articles that were published by them that were offensive and antagonistic towards the first plaintiff and particulars of the articles that expressly or impliedly attempted to discredit and/or disparage and/or vilify the good name of the first plaintiff.

Held, dismissing the application with costs:

- (1) Whilst the defendants themselves have referred to some of their publications without naming them or giving details of the said publications which the defendants themselves admit were not well received by the plaintiffs, the plaintiffs by their plea on which the particulars have been sought are themselves relying on what had been written in those same unnamed and unidentified publications, as conduct actuated by malice. The articles contained in those publications are clearly within the custody, control and possession of the defendants themselves and the plaintiffs can rely on a plea of malice (see p 594G–I).
- (2) Considering the tenure of the entire pleadings, the court is of the view that this application has no merits. The defendants well and truly know, as admitted in the defence, that some of their own

A publications have not been well received by the plaintiffs; it is these publications that the plaintiffs contend, form the basis of malicious intent (see p 595E).

B **[Bahasa Malaysia summary]**

C Plaintiff-plaintiff, sebuah parti politik, mendakwa defendan dalam libel oleh kerana defendan telah menerbitkan sebuah artikel yang dikatakan oleh plaintiff-plaintiff bermaksud dalam maksud yang asalnya bahawa ahli-ahli Wanita MIC, khususnya pemimpin-pemimpin dan pegawai-pegawai yang berpangkat tinggi, merupakan wanita-wanita yang tidak bermoral dan bereputasi buruk yang merayau di tempat hiburan malam, mengabaikan keluarga mereka dan merupakan hipokrit yang menggambarkan seperti mempunyai nila-nilai moral yang tinggi, walhal berkelakuan sebaliknya. Dalam pembelaannya, defendan menafikan bahawa artikel itu diterbitkan dengan niat jahat dan tanpa justifikasi dan telah menggunakan s 8 Akta Fitnah 1957. Secara alternatif, defendan menafikan bahawa artikel tersebut, dalam maksud yang asalnya, memberikan maksud seperti yang diberikan oleh plaintiff-plaintiff. Selanjutnya, defendan berkata bahawa tindakan pihak plaintiff digerakkan oleh niat jahat. Defendan juga bergantung kepada komen berpatutan di atas perkara-perkara kepentingan awam dan berkata bahawa mereka telah bertindak dengan suci hati. Defendan kemudiannya telah memfailkan permohonan untuk butir lanjut dan jelas artikel-artikel yang dikatakan secara nyata ataupun tersirat mencemarkan nama baik plaintiff pertama.

F **Diputuskan**, permohonan ditolak dengan kos:

- G (1) Meskipun defendan-defendan telah merujuk kepada terbitan mereka tanpa menamakan atau memberi butiran terbitan-terbitan tersebut yang mana defendan-defendan sendiri mengaku bahawa terbitan-terbitan tersebut tidak diterima dengan baik oleh pihak plaintiff, pihak plaintiff, melalui pli mereka dimana butir tersebut dipohon, sendiri bergantung kepada apa yang ditulis dalam terbitan-terbitan yang tidak dinamakan dan tidak dikenalpasti tersebut, sebagai kelakuan berniat jahat. Artikel-artikel di dalam terbitan tersebut jelasnya berada di dalam jagaan dan milikan defendan-defendan. Plaintiff boleh bergantung ke atas pli niat jahat (lihat ms 594G-I).
- H (2) Memandangkan tempoh keseluruhan pliding, mahkamah berpendapat bahawa permohonan ini tidak bermerit. Defendan dengan sebenarnya tahu, seperti yang diakui dalam pembelaan, bahawa sesetengah daripada terbitan-terbitan mereka tidak diterima dengan baik oleh pihak plaintiff; terbitan-terbitan inilah pihak plaintiff berkata yang merupakan dasar kepada niat jahat (lihat ms 595E).]
- I

Notes

For cases on application for further and better particulars in pleadings, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 3547–3548.

Legislation referred to

Defamation Act 1957 s 8

Societies Act 1966

S Nanthabalan (*Sujatabalan* with him) (*Shook Lin & Bok*) for the plaintiffs.

Saraswathy Kandasami (*S Kandasami & Co*) for the defendants.

Kamalanathan Ratnam J:*Facts*

The plaintiffs sued the defendants in libel and sought damages and an injunction to restrain the defendants from publishing any similar or like libel. The first defendant publishes and distributes in the Tamil language a Sunday newspaper called *Makkal Osai*. The second defendant was at all material times a reporter employed by the first defendant. The first plaintiff is a political party registered as a society under the Societies Act 1966 and its members consist of Malaysian Indians of Indian origin and is commonly called the MIC. At all material times, the second plaintiff was the Head of the Women's Section of the MIC ('Wanita MIC'). The third, fourth, fifth and sixth plaintiffs are respectively the Secretary, Treasurer, Information Officer and Leader of the Women's Section of Wanita MIC.

On the front page of the issue of *Makkal Osai* dated 14 February 1999, the first defendant caused to be published an article authored by the second defendant in the Tamil language under the caption:

IN DISCOTHEQUES: MIC WOMEN WANDERING IN SEARCH OF PLEASURE

The caption appears above a photograph of unidentified Indian women seated on bar stools at an unknown drinking outlet holding a glass each in their hands. The plaintiffs contend that the overall purpose of the caption and the photograph was to convey to the general reader that the drinks were alcoholic drinks and that the said women featured in the photograph were the said MIC women wandering in search of pleasure. There was also an article on the conduct of such women at pubs and nightclubs. The plaintiffs pleaded that the article complained of in its natural and ordinary meaning, meant and was understood to mean, amongst others, that members of Wanita MIC, particularly the leaders and high officials of Wanita MIC are of loose morals, that they roam the pubs and nightclubs, craving pleasure, away from their husbands and families, that they are women of disrepute, that they are hypocrites in that they purport to speak of high moral values but instead behave in an immoral way.

- A** In their defence the defendants denied that the said article was published with malice and without justification, and specifically relied on s 8 of the Defamation Act 1957. Alternatively, the defendants denied that the said article in its natural and ordinary meaning bore or was capable of bearing the meanings the plaintiffs attributed to the article. The defendants further contended that the plaintiffs' action in filing this suit is actuated by bad faith. The defendants also relied on fair comment upon matters of public interest. In giving particulars of facts and matters on which the comments were based, the defendants amongst others, relied on three specific particulars which are reproduced herewith as being necessary for this application.

C PARTICULARS OF FACTS AND MATTERS ON WHICH THE
COMMENTS ARE BASED

- D** (h) With the same objective the first defendant had, on some occasions, published certain articles in *Makkal Osai* which inevitably hinged on the failures and/or omissions of the first plaintiff in addressing certain matters. In all circumstances the first defendant's intention was to bring about fruitful outcome for the benefit of the Indian community as a whole. Therefore at all material times, the first defendant had acted in good faith and solely in the 'interest of the public'.
- E** (i) Such publications have brought about some positive steps being taken by the first plaintiff and thereby benefited the public as a whole. One such example was the reporting of the degrading state of the Batu Caves Tamil School by the first defendant which led to the immediate refurbishment of the said Tamil School by the first plaintiff.
- F** (j) However the first plaintiff was not comfortable with such reporting as the same gave opportunity to the public to express their opinions and sentiments on the issues raised wherein some of which expressions were not favourable to the first plaintiff. The first plaintiff had been odious against the first defendant on many occasions.

- G** Considering the lengthy and exhaustive defence filed, the plaintiffs then filed a reply in which in para 8 they pleaded that in writing the said article, the first defendant was actuated by express and actual malice. They also gave particulars from which malice was to be inferred. The particulars pleaded were as follows:

Para 8

- H** (i) The first defendant's newspaper, the *Makkal Osai*, has always published articles which were offensive and antagonistic towards the first plaintiff as a political party.
- I** (ii) The articles in the *Makkal Osai* which relate to the first plaintiff (and its leadership) usually, whether expressly or impliedly, attempt to discredit and/or disparage and/or vilify the good name of the first plaintiff (and that of its leadership).
- (iii) In furtherance of the first defendant's ill motives and agenda against the first plaintiff as stated above, the second defendant had falsely and maliciously authored the said article with the express intent to injure the first plaintiff as a political party (and that of its leadership).

- (iv) The first defendant's agenda and intent to injure the plaintiff is obvious from the fact that although in their defence they allege that 'the number of Indian women crowding these places (nightspots and discotheques) have increased' and 'it ... was with this greater concern of the public's interest that the second defendant authored the said article', the said article expressly implicated only MIC women and those holding important positions in MIC.

A

B

The defendants' application for further and better particulars

The defendants then filed this application (encl 75) seeking further and better particulars of para 8(i) and (ii) of the reply. In respect of para (i), they sought particulars of the articles published by them which were offensive and antagonistic towards the first plaintiff and in respect of para (ii) they sought particulars of the articles that expressly or impliedly attempted to discredit and/or disparage and/or vilify the good name of the first plaintiff.

C

Findings of the court

Ms Saraswathy for the defendants argued that since pleading express malice would be tantamount to denying the defendants the defence of fair comment and qualified privilege and also since malice would form the basis for a claim for aggravated damages, it was only proper that the plaintiff ought to supply sufficient particulars so that the defendants would be aware of the allegations they would have to answer at the trial proper. In response, Mr Nanthabalan for the plaintiffs, submitted that ordinarily he would agree with such a submission. However, he invited me to read the particulars of facts and matters which the defendants had pleaded in order to rely on the defence of fair comment.

D

E

Having read the three particulars I have reproduced, it is clear to me that even the defendants had referred to articles they had published which highlighted the failures and/or omissions of the first plaintiff. The defendants admitted therein that whilst one example of the first plaintiff's failure and/or omission to act was put right due to the defendants' highlighting, namely, the rectification of the condition of the Batu Caves Tamil School, the defendants also admitted that some of their publications were not well received by the plaintiffs because of unfavourable public expression of opinion and sentiments on the matters raised by the defendants.

F

G

It is my judgment that whilst the defendants themselves have referred to some of their publications, without naming them or giving details of the said publications, which the defendants themselves admit were not well received by the plaintiffs, the plaintiffs by their plea on which the particulars have been sought, are themselves relying on what had been written in those same unnamed and unidentified publications, as conduct actuated by malice. The articles contained in those publications are clearly within the custody, control and possession of the defendants themselves.

H

In any case, from the pleaded defence itself, as presently remaining, it is my judgment that the plaintiffs can rely on a plea of malice. This is illustrated by para 8(iv). The article clearly and specifically referred to:

I

- A (1) Indian women VIPs holding important positions in MIC spending their days and nights in these nightclubs;
- (2) women from this political party, namely, the MIC, drinking liquor and smoke and keep company with heavily boozed up men;
- (3) such women from the MIC attending these discos and pubs after
- B adorning themselves in order to lure men by moving freely with them;
- (4) it being a usual sight to find these women (from the MIC) forgetting their homes, and trooping into discos and pubs after participating in political and social functions;
- (5) a woman MIC member singing and dancing in a popular disco and
- C pub and kissing another prominent figure;
- (6) a woman MIC member who is alleged to have said that after attending a social function, peace of mind is lost upon returning home and that therefore forgetting the home and going to the pubs daily is comforting; and
- D (7) the same woman who is reputed to have said that peace derived from pubs cannot be found at home.

From the statement of claim and the defence and the reply, there is no doubt in my mind that acrimony and ill will are spewing like molten lava, throughout the entire pleadings. Parties also agree in their submission that there is no love lost between them.

- E Considering the tenure of the entire pleadings, I am of the view that this application has no merits. The defendants well and truly know, as admitted in the defence, that some of their own publications have not been well received by the plaintiffs; it is these publications that the plaintiffs contend, form the basis of malicious intent. I therefore dismissed this application with costs.
- F

Although I have not as yet received any formal notification that an appeal has been filed, I was notified immediately by Ms Saraswathy after I had given my oral decision, that she was appealing my decision.

Application dismissed with costs.

G

Reported by Wong Ee Lynn

H

I